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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California corporation, Plaintiff, v. HYPHY MUSIC, INC., Defendant.	Case No.: 1:20-cv-00988-JLT-BAM [Assigned to the Hon. Jennifer L. Thurston] HYPHY MUSIC, INC.’S SEPARATE STATEMENT OF UNDISPUTED FACTS IN OPPOSITION TO JESUS CHAVEZ, SR.’S MOTION FOR SUMMARY JUDGMENT
HYPHY MUSIC, INC., Counterclaimant, v. YELLOWCAKE, INC.; COLONIZE MEDIA, INC; JOSE DAVID HERNANDEZ; and JESUS CHAVEZ SR, Counter-Defendants.	Date: September 29, 2023 Time: 9:00 a.m. Dept.: Courtroom 4 (7 th Floor) 2500 Tulare Street Fresno, CA 93721 Judge: Hon. Jennifer L. Thurston

SEPARATE STATEMENT OF UNDISPUTED FACTS IN OPPOSITION TO
JESUS CHAVEZ, SR.’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Eastern District of California Local Rule 260, Defendant/Counterclaimant Hyphy Music, Inc. (“*Hyphy*”) hereby responds to the Separate Statement of Undisputed facts submitted by Counter-Defendant Jesus Chavez, Sr. (“*Chavez*”) in support of Chavez’s Motion for Summary Judgment filed on or about July 14, 2023 (the “*Motion*”).

I.

**SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF CROSS-
DEFENDANT AS CROSSCLAIMANT CANNOT SHOW THAT CHAVEZ
BREACHED THEIR AGREEMENT**

<u>Moving Party’s Undisputed Material Facts and Supporting Evidence</u>	<u>Opposing Party’s Response and Evidence</u>
<p>1. Counterclaimant alleges that it entered into an oral exclusive recordings agreement (the “Oral Agreement”) with Chavez in or about February 2013.</p> <p><u>Supporting Evidence:</u></p> <p>Counterclaimant’s First Amended Counterclaim (“FAC”) ¶ 16, 78 attached as Exhibit “B” to the Statement of Evidence (“SOE”); Request for Judicial Notice (“RJN”) at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>Undisputed.</p>
<p>2. Counterclaimant alleges that the Oral Agreement was for a period of five (5) years pursuant to which Chavez was to exclusively provide services as a recording artist in the making of sound and audio-visual recordings with respect to the Los Originales Albums.</p> <p><u>Supporting Evidence:</u></p> <p>FAC ¶ 16, 78 attached as Exhibit “B”</p>	<p>Disputed, to the extent that such an assessment of the terms of the Oral Agreement fails to include other alleged terms thereof, including, without limitation, that Hyphy agreed to: 1) select the musical compositions to be recorded on the Los Originales Albums; 2) commission and/or provide the sound engineers and audio visual directors; 3) produce the musical performances to be embodied on the Los Originales Albums; 4) direct the recording and filming of musical and the audio visual</p>

<p><u>Moving Party’s Undisputed Material Facts and Supporting Evidence</u></p>	<p><u>Opposing Party’s Response and Evidence</u></p>
<p>to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>performances to be embodied on the Los Originales Albums; and 5) pay Chavez a fixed amount per Los Originales Album.</p> <p>First Amended Counterclaims (“<i>FACC</i>”) at ¶ 16 (Dkt. 15).</p>
<p>3. Counterclaimant alleges that, in consideration for the services provided and payment thereto, Chavez agreed that Counterclaimant would be the owner of all title, right, and interest in and to the Los Originales Albums (including without limitation the copyrights and any extensions and renewals thereto) from the inception of the creation of each Los Originales Album.</p> <p><u>Supporting Evidence:</u></p> <p>FAC ¶ 16, 78 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as Exhibit “C” to the SOE.</p>	<p>Disputed, to the extent that such an assessment of the terms of the Oral Agreement fails to include other alleged terms thereof, including, without limitation, that, in exchange for Hyphy’s agreement to: 1) select the musical compositions to be recorded on the Los Originales Albums; 2) commission and/or provide the sound engineers and audio visual directors; 3) produce the musical performances to be embodied on the Los Originales Albums; 4) direct the recording and filming of musical and the audio visual performances to be embodied on the Los Originales Albums; and 5) pay Chavez a fixed amount per Los Originales Album, Chavez agreed to follow Hyphy’s artistic direction, perform and record the sound and audiovisual recordings embodying the musical compositions chosen and produced by Hyphy, and grant Hyphy the non-exclusive right to utilize Chavez’s name and likeness in connection with the exploitation of the Los Originales</p> <p>FACC at ¶ 16 (Dkt. 15).</p>
<p>4. Counterclaimant alleges that, in or about April 2019, Chavez breached the Oral Agreement by without limitation, purportedly transferring, licensing, selling, and/or authorizing Counter-defendants Yellowcake, Inc. and Colonize Media, Inc. to exploit the Los Originales Albums and Cover Art.</p> <p><u>Supporting Evidence:</u></p> <p>FAC ¶ 79 attached as Exhibit “B” to the SOE; RJN at ¶ 1 attached as</p>	<p>Undisputed.</p>

<p><u>Moving Party's Undisputed Material Facts and Supporting Evidence</u></p>	<p><u>Opposing Party's Response and Evidence</u></p>
<p>Exhibit "C" to the SOE.</p>	
<p>5. Counterclaimant alleges that, at the time of the transfer to Yellowcake, Chavez possessed no transferable rights with respect to the Los Originales Albums.</p> <p><u>Supporting Evidence:</u></p> <p>FAC ¶ 23 attached as Exhibit "B" to the SOE; RJN at ¶ 1 attached as Exhibit "C" to the SOE.</p>	<p>Disputed, to the extent it mischaracterizes Hyphy's allegations, which are that Chavez transferred his ownership and rights in the Los Originales Albums that Chavez had no such rights to grant.</p> <p>FACC at ¶ 23 (Dkt. 15)</p>
<p>6. Counterclaimant admits that Chavez was not an employee of Counterclaimant.</p> <p><u>Supporting Evidence:</u></p> <p>Deposition Transcript of Jose Martinez ("Martinez Dep.") at pp. 39:18-20 attached as Exhibit "E" to the SOE; Declaration of William H. Littlewood ("Littlewood Decl.") at ¶ 3 attached as Exhibit "D" to the SOE. Counterclaimant's Responses to Counter-Defendants' First Set of Interrogatories, Response to Interrogatory ("SROG Response") No. 11 attached as Exhibit "F" to the SOE; Littlewood Decl. at ¶ 4 attached as Exhibit "D" to the SOE. Counterclaimant's Responses to Counter-Defendants' First Set of Requests for Production of Documents ("RPD Response") Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	<p>Undisputed.</p>
<p>7. Counterclaimant admits that none of the Los Originales band members were employees of Counterclaimant.</p> <p><u>Supporting Evidence:</u></p>	<p>Undisputed. The group operated as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores ("Flores") and drummer Alfonso Vargas ("Vargas").</p>

<p><u>Moving Party's Undisputed Material Facts and Supporting Evidence</u></p>	<p><u>Opposing Party's Response and Evidence</u></p>
<p>Martinez Dep. at pp. 39:21-23 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE.</p>	<p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Deposition Transcript of Alfonso Vargas ("Vargas Depo") at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Deposition Transcript of Domingo Torres Flores ("Flores Depo") at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>
<p>8. There is no written agreement between Counterclaimant and Chavez substantiating an alleged work for hire relationship between the parties.</p> <p><u>Supporting Evidence:</u></p> <p>RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	<p>Undisputed.</p>
<p>9. There is no written agreement between Counterclaimant and Chavez whereby Chavez agreed that Counterclaimant would be the owner of all title, right, and interest in the Los Originales Albums.</p> <p><u>Supporting Evidence:</u></p> <p>Martinez Dep. at pp. 39:25-40:24; 125:19-126:11 attached as Exhibit "E" to the SOE; Littlewood Decl. at ¶ 3 attached as Exhibit "D" to the SOE. RPD Response Nos. 23-24 attached as Exhibit "G" to the SOE; Littlewood Decl. at ¶ 5 attached as Exhibit "D" to the SOE.</p>	<p>Undisputed.</p>

HYPHY’S ADDITIONAL UNDISPUTED MATERIAL FACTS

I. HYPHY AND CHAVEZ WERE PARTIES TO AN ENFORCEABLE AGREEMENT THAT CHAVEZ BREACHED

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez’s Responses and Supporting Evidence</u>
<p>1. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.</p> <p>Declaration of John Begakis (“<i>Begakis Decl.</i>”) at ¶ 6, Exhibit “F” thereto, Jose Martinez Deposition Transcript (“<i>Martinez Depo</i>”) at 13:6-14:6.</p>	
<p>2. Counter-Defendant Jesus Chavez Sr. (“<i>Chavez</i>”) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the “<i>Group</i>”).</p> <p>Begakis Decl. at ¶ 11, Exhibit “K” thereto, Jesus Chavez, Sr. Deposition, Volume I (“<i>Chavez Depo I</i>”) at 25:13-14; Begakis Decl. at ¶ 12, Exhibit “L” thereto, Jesus Chavez, Sr. Deposition, Volume II (“<i>Chavez Depo II</i>”) at 16:22-17:5.</p>	
<p>3. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (“<i>Flores</i>”), and drummer</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Alfonso Vargas ("<i>Vargas</i>").</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Deposition Transcript of Alfonso Vargas ("<i>Vargas Depo</i>") at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Deposition Transcript of Domingo Torres Flores ("<i>Flores Depo</i>") at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>4. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums (collectively, the "<i>Los Originales Albums</i>" or "<i>Albums</i>"), which they had orally agreed amongst themselves were to be owned by Hyphy (the "<i>Agreement</i>").</p> <p>Declaration of Jose Martinez ("<i>Martinez Decl.</i>") at ¶ 3; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p>	
<p>5. The albums created pursuant to the Agreement were entitled (1) "Amigos y Contrarios"; (2)</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>“Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “<i>Los Originales Albums</i>” or “<i>Albums</i>”).</p> <p>Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 44:7-23, 51:22-25.</p>	
<p>6. One of the other two albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.</p> <p>Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 44:24:-9, 154:11-155:25.</p>	
<p>7. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy.</p> <p>Martinez Decl. at ¶¶ 4-5. Declaration of Domingo Torres Flores (“<i>Flores Decl.</i>”) at ¶¶ 3-5; Declaration of Alfonso Vargas (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>8. Flores and Vargas later confirmed their belief and intent to convey all rights in the Albums to Hyphy by executing enforceable Copyright</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez’s Responses and Supporting Evidence</u>
<p>Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”)</p> <p>Martinez Decl. at ¶ 5, Exhibit “A” thereto.</p>	
<p>9. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>10. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>11. For the first three (of five) of the Los Originales Albums, Hyphy selected the songs to be included in each Album.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>12. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio and paid for all costs associated with the recording of each Album.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>13. For the first three (of five) of the</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Los Originales Albums, Hyphy hired the sound engineer.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 59:21-60:7, 61:10-16.</p>	
<p>14. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>15. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 85:14-86:16.</p>	
<p>16. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>17. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (and then recorded for the Albums).</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>18. For the final two (of five) of the Los Originales Albums, Hyphy also directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>19. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an "MC"/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>20. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded whole portions of the guitarist's contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>21. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>22. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>23. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto,</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>24. In addition to its original creative contributions to the production, recording and overall creation of the Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the "<i>Album Artwork</i>").</p> <p>Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 127:12-21.</p>	
<p>25. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers ("<i>DSPs</i>") between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 8, Exhibit "B" thereto; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p>	
<p>26. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 9, Exhibit "C" thereto; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 133:9-136:5.</p>	
<p>27. Plaintiff/Counter-Defendant</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Yellowcake, Inc. ("Yellowcake") is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. ("Colonize") as its "distribution arm" to release and exploit rights acquired by Yellowcake.</p> <p>Begakis Decl. at ¶ 7, Exhibit "G" thereto, Deposition Transcript of Kevin Berger ("Berger Depo") at 91:19-23; Begakis Decl. at ¶ 8, Exhibit "H" thereto, Deposition Transcript of Jose David Hernandez, Volume I ("Hernandez Depo I") at 77:19-21.</p>	
<p>28. Counter-Defendant Jose David Hernandez ("Hernandez"), who is a co-owner of both Yellowcake and Colonize, knew that Hyphy only had an oral agreement with the Group, and therefore approached Chavez, in or about March 2019, about selling the Los Originales Albums to Yellowcake.</p> <p>Begakis Decl. at ¶ 8, Exhibit "H" thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>29. Chavez, who at this time was advanced in age and suffering from significant health problems, which prevented him from performing or generating income, therefore agreed to accept \$500,000 for the Albums.</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Begakis Decl. at ¶ 8, Exhibit “H” thereto, Hernandez Depo I at 107:4-20; Begakis Decl. at ¶ 12, Exhibit “L” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16, 88:25-89:9.</p>	
<p>30. Chavez and Yellowcake attempted to codify their purported agreement via an “Asset Purchase and Assignment Agreement” executed on or about March 21, 2019 (the “<i>Asset Purchase Agreement</i>”).</p> <p>Begakis Decl. at ¶ 5, Exhibit “E” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039).</p>	
<p>31. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale.</p> <p>Begakis Decl. at ¶ 5, Exhibit “E” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF00024).</p>	
<p>32. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party’s respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p> <p>Begakis Decl. at ¶ 4, Exhibit “D” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
5, Exhibit "E" thereto, Yellowcake Responses to Request for Production at p. 4.	
<u>II. ALL OF CHAVEZ'S OTHER ARGUMENTS ARE IRRELEVANT</u>	
<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
33. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork. Declaration of John Begakis (" <i>Begakis Decl.</i> ") at ¶ 6, Exhibit "F" thereto, Jose Martinez Deposition Transcript (" <i>Martinez Depo</i> ") at 13:6-14:6.	
34. Counter-Defendant Jesus Chavez Sr. (" <i>Chavez</i> ") is the lead singer of the Spanish-language musical group Los Originales De San Juan (the " <i>Group</i> "). Begakis Decl. at ¶ 11, Exhibit "K" thereto, Jesus Chavez, Sr. Deposition, Volume I (" <i>Chavez Depo I</i> ") at 25:13-14; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Jesus Chavez, Sr. Deposition, Volume II (" <i>Chavez Depo II</i> ") at 16:22-17:5.	
35. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (" <i>Flores</i> "), and drummer	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Alfonso Vargas ("<i>Vargas</i>").</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Deposition Transcript of Alfonso Vargas ("<i>Vargas Depo</i>") at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Deposition Transcript of Domingo Torres Flores ("<i>Flores Depo</i>") at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>36. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums (collectively, the "<i>Los Originales Albums</i>" or "<i>Albums</i>"), which they had orally agreed amongst themselves were to be owned by Hyphy (the "<i>Agreement</i>").</p> <p>Declaration of Jose Martinez ("<i>Martinez Decl.</i>") at ¶ 3; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p>	
<p>37. The albums created pursuant to the Agreement were entitled (1) "Amigos y Contrarios"; (2)</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>“Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “<i>Los Originales Albums</i>” or “<i>Albums</i>”).</p> <p>Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 44:7-23, 51:22-25.</p>	
<p>38. One of the other two albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.</p> <p>Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 44:24:-9, 154:11-155:25.</p>	
<p>39. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy.</p> <p>Martinez Decl. at ¶¶ 4-5. Declaration of Domingo Torres Flores (“<i>Flores Decl.</i>”) at ¶¶ 3-5; Declaration of Alfonso Vargas (“<i>Vargas Decl.</i>”) at ¶¶ 3-5</p>	
<p>40. Flores and Vargas later confirmed their belief and intent to convey all rights in the Albums to Hyphy by executing enforceable Copyright</p>	

<u>Hyphy’s Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez’s Responses and Supporting Evidence</u>
<p>Assignment Agreements on or about March 22, 2022 (collectively the “<i>Assignments</i>”)</p> <p>Martinez Decl. at ¶ 5, Exhibit “A” thereto.</p>	
<p>41. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p>	
<p>42. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the “theme and overall creative direction of each Album.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>43. For the first three (of five) of the Los Originales Albums, Hyphy selected the songs to be included in each Album.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit “F” thereto, Martinez Depo at 83:11-84:22.</p>	
<p>44. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio and paid for all costs associated with the recording of each Album.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>45. For the first three (of five) of the</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Los Originales Albums, Hyphy hired the sound engineer.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 59:21-60:7, 61:10-16.</p>	
<p>46. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums.</p> <p>Martinez Decl. at ¶ 6.</p>	
<p>47. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 85:14-86:16.</p>	
<p>48. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>49. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (and then recorded for the Albums).</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>50. For the final two (of five) of the Los Originales Albums, Hyphy also directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>51. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an "MC"/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>52. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded whole portions of the guitarist's contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 75:6-25.</p>	
<p>53. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>as an unincorporated partnership in which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 11, Exhibit "K" thereto, Chavez Depo I at 18:23-19:3.</p>	
<p>54. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> <p><i>See</i> Begakis Decl. at ¶ 9, Exhibit "I" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p>	
<p>55. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.</p> <p>Begakis Decl. at ¶ 9, Exhibit "I" thereto,</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 10, Exhibit "J" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p>	
<p>56. In addition to its original creative contributions to the production, recording and overall creation of the Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the "<i>Album Artwork</i>").</p> <p>Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 127:12-21.</p>	
<p>57. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers ("<i>DSPs</i>") between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 8, Exhibit "B" thereto; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p>	
<p>58. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 9, Exhibit "C" thereto; Begakis Decl. at ¶ 6, Exhibit "F" thereto, Martinez Depo at 133:9-136:5.</p>	
<p>59. Plaintiff/Counter-Defendant</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Yellowcake, Inc. ("Yellowcake") is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. ("Colonize") as its "distribution arm" to release and exploit rights acquired by Yellowcake.</p> <p>Begakis Decl. at ¶ 7, Exhibit "G" thereto, Deposition Transcript of Kevin Berger ("Berger Depo") at 91:19-23; Begakis Decl. at ¶ 8, Exhibit "H" thereto, Deposition Transcript of Jose David Hernandez, Volume I ("Hernandez Depo I") at 77:19-21.</p>	
<p>60. Counter-Defendant Jose David Hernandez ("Hernandez"), who is a co-owner of both Yellowcake and Colonize, knew that Hyphy only had an oral agreement with the Group, and therefore approached Chavez, in or about March 2019, about selling the Los Originales Albums to Yellowcake.</p> <p>Begakis Decl. at ¶ 8, Exhibit "H" thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 12, Exhibit "L" thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p>	
<p>61. Chavez, who at this time was advanced in age and suffering from significant health problems, which prevented him from performing or generating income, therefore agreed to accept \$500,000 for the Albums.</p>	

<u>Hyphy's Undisputed Material Facts and Supporting Evidence</u>	<u>Chavez's Responses and Supporting Evidence</u>
<p>Begakis Decl. at ¶ 8, Exhibit “H” thereto, Hernandez Depo I at 107:4-20; Begakis Decl. at ¶ 12, Exhibit “L” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16, 88:25-89:9.</p>	
<p>62. Chavez and Yellowcake attempted to codify their purported agreement via an “Asset Purchase and Assignment Agreement” executed on or about March 21, 2019 (the “<i>Asset Purchase Agreement</i>”).</p> <p>Begakis Decl. at ¶ 5, Exhibit “E” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF000021-PLF000039).</p>	
<p>63. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale.</p> <p>Begakis Decl. at ¶ 5, Exhibit “E” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF00024).</p>	
<p>64. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party’s respective contributions to, and rights in, the Albums and sound recordings embodied thereon.</p> <p>Begakis Decl. at ¶ 4, Exhibit “D” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶</p>	

1	<u>Hyphy's Undisputed Material Facts</u>	<u>Chavez's Responses and Supporting</u>
2	<u>and Supporting Evidence</u>	<u>Evidence</u>
3	5, Exhibit "E" thereto, Yellowcake	
4	Responses to Request for Production at	
	p. 4.	

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7 DATED: August 15, 2023

ALTVIEW LAW GROUP, LLP

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9 By:

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11 JOHN M. BEGAKIS
12 *Attorneys for Defendant/Counterclaimant*
13 HYPHY MUSIC, INC., a California
14 corporation
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 15, 2023

By: /s/ John Begakis
John M. Begakis